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## NOTES AND COMMENTS.

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### I.

#### CLAIMS AGAINST THE GOVERNMENT.

It is a singularly inconsistent thing, that while there is a surplus in the United States Treasury numbered by the hundred millions, and while the bonded indebtedness of the government is paid, principal and interest, with rare promptitude and fidelity, the ordinary claims of citizens for supplies furnished and services rendered should in many cases be practically out of the reach of collection. It is safe to say that when an obligation or indebtedness of the United States falls into the unhappy condition in which it is stigmatized as a "claim," it is practically not worth fifty or twenty-five cents on the dollar. Men have passed from the meridian of manhood, grown gray and died, in the ever hopeful effort to collect what they believed to be a just claim, and sons and grandsons have inherited these doubtful expectancies, in which the means of so many have been swallowed up. Congress, since the Government began, has been besieged by such claimants. Committees have been converted into a species of judicatories to try them. The old Committee on Claims has been divided into committees on War Claims, Pension Claims, Land Claims, and many other ; and in fact almost every committee, from that on "Ways and Means" down, has a long string of those historical reminiscences before it. While a few painstaking, laborious men show a disposition fairly to consider these propositions, with the great majority the prevailing sentiment seems to be to show "how not to do it." In a spirit of bitter economy, which does not extend to all branches of the government, some of these committees have actually been organized so that almost anything in the shape of a claim against the government would be rejected. The unhappy claimant goes before them like a lamb to the slaughter. He pinches himself so as to obtain the means to stay in Washington to attend to his case. He has his bill introduced and referred if he can find a member sufficiently complaisant, "a bill being in the nature of a petition." He wearily waits on committee and sub-committee. He tries to get documents from the departments and elsewhere to fortify it. He may or may not employ legal help ; in any event he becomes initiated in the mysteries of petitions, briefs, arguments. He finds out that committees do not always meet on the days appointed, and if they do that they have probably more important business than his to attend to. Hope rises strong within him on a promise to obtain a favorable report. Should he after months of toil and delay be fortunate enough to obtain one, he goes into rapture when his bill is reported and gets on the calendar. Poor man, little does he know that the "Calendar" is usually the "tombs of all the Capulets." He affectionately watches it, and tries to get some friendly member to call it up. In a moment of misguided confidence he has probably written to his friends that he is just on the point of being paid.

From these dreams he is rudely awakened by the rap of the Speaker's gavel adjourning that Congress *sine die*. If he is a novice he will probably suppose that the new Congress will take up his case where the old one left it, but learns, to his horror, that the fearful rap of the speaker's gavel buried all the incompleted work of Congress. All has to be done over again. The case of "*Jarndice versus Jarndice*" was nothing to this.

It is to be taken for granted that a certain number of these claims ought not to be paid. Many more with a just basis are no doubt exaggerated, and should only be paid in part. Yet the fact remains, that a great many of them are honest, and that the United States, through the action of its agents, occupies, to them, the questionable position of a dishonest and equivocating debtor. When you come to analyze it, the Government exercises several widely different functions. The Government, as a law-making power, seems to trench almost on the attributes of Deity, but the Government as a huckster in saddles, clothing, arms, commissaries, military service, mail route contracts, stationery, horses, bricks, mortar, marble, and sandstone, is quite another character. The people have to deal with both. An important part of the law-making function is to provide for levying and collecting taxes and appropriating money for disbursements. The executive branch is supposed simply to execute the law. In doing so, however, it has got into a habit of construing law that is not altogether barren of results. Between the law making and executive branches there has always been more or less encroachment and collision. Jealous of executive disbursements of money, Congress has scrupulously stripped the executive of many elements of discretion. There is, indeed, an expansive tendency in the disbursements of public money requiring pretty rigid rules. This has led, however, to the habit of hedging in all payments by technicalities, restricting appropriations to the expenses of the current year, and providing that all unexpended balances after a certain date shall lapse. It is difficult to estimate for the exact expenses of a growing government like ours. It is impossible to estimate the losses that must occur in working its widely ramified machinery. From all these circumstances unpaid debts arise.

Every other person in these United States who does business, except Uncle Sam, can "sue and be sued." This robust Government of ours, which thus assumes to buy and sell and make bargains with all of its citizens, claims exemption from the operation of courts and the sheriff on the traditional, royal doctrine that "the king can do no wrong." This precious legacy has come down to us like a great deal of other rubbish. As a matter of rigid statistical fact kings are always in the habit of doing wrong. While governments have undoubtedly improved, the best of them are not infallible. Why should not the Government of the United States be compelled to pay its honest debts when it is tardy about it? If in my dealings with my neighbor I inflict an injury upon him without fault of his, he has a legal remedy against me. Why should not the Government of the United States be equally responsible.

It may be said that we have the Court of Claims. That court is a half halting step between justice and arbitrary rule. It exists only at the capitol of the country, and cannot be said to offer any remedy for the prompt collection of the small claims of poor people. Its jurisdiction is fenced within narrow limits, and is estopped by arbitrary limitation laws, in which the United States does not hesitate to plead the statute to bar out an honest claim. Its judgments are not final, and cannot afford prompt redress. After a judgment by that court, Congress must appropriate the money, thus entailing a year's delay, and, while Congress usually pays judgments, it may not do so. Under one act that has been in existence for several years the head of a depart-

ment, or a committee in Congress, may send the papers in a case to the Court of Claims for an ascertainment of facts, but no verdict is allowed to be rendered. So far as the claimant is concerned, it entails all the expense of a suit without a definite result. It is a Pickwickian arrangement by which there is a dual jurisdiction: one body finds all the facts, and another, too lazy to do it, decides the case. Practically, it is a mode of escaping responsibility. If the head of a department gets a favorable report from the Court of Claims, and is inclined to pay the claim, he does so; otherwise he does not. It is about the same thing with the committees, the result being that this act is of but little use to the Government or the claimant. It will easily be seen that this offers no adequate remedy to a man with money justly due him.

The other, and the old remedy, is to appeal to Congress. Men at all conversant with the subject will never maintain that a committee, or even Congress, is at all suited for the adjudication of claims between the Government and its citizens. In the first place, it has, or should have, a much more important function to perform. It is not a judicial tribunal and should never be permitted to do judicial work. No law should ever be enacted by a parliamentary body that cannot, if necessary, be passed upon by the courts. Any law which embodies in its form a complete executive and judicial function is mere brute force, a monstrosity under our constitution, and should not be tolerated.

Many reasons have been given why Congress should not determine questions involving private interests. The proper function of the law-making power is to deal with general principles, which should be of general application. It is difficult, indeed practically impossible, to pass small claims through Congress. To give it any show for a respectful hearing, a claim must be of majestic proportions.

Disappointed applicants do not hesitate to allege that if they had only claimed four times as much they might have had some chance, and that the extra amount thus saddled on the claim would be no more than sufficient to compensate the expenses and vexatious delays. It is not an economical way of carrying on business for either the claimant or the Government. Committees passing upon the interests of individuals or corporations, where great sums are concerned, have always been exposed to suspicion, no doubt unjustly, but the true remedy lies in eliminating such an exercise of power. It is usual, in bad cases, to blame the lobby. It is the scapegoat that is sent to the wilderness with all the sins of the congregation on its head, but this vicarious atonement rarely mends matters. The lobby has existed since parliamentary bodies were evolved from the chaos of protests and petitions. The "third house" is probably no better, and no worse than the first and second. It exists legitimately, and will, so long as Congress and legislatures attempt to pass on matters affecting private interests, and just so long should the individuals affected be respectfully heard. To create a professional lobby at Washington, as has been proposed, would infringe on the rights of the humblest citizen from the remotest State or territory. The capital and its business is general property; but it is needless to argue the question, since the Constitution declares that "the right of petition shall never be abridged."

Without enumerating all the causes that create legitimate claims against the Government, and which are thus, in the absence of a more convenient and prompt remedy, thrown before Congress, enough has been stated to show that the law-making branch of the Government is totally unable to grapple with them, or to afford the prompt and certain justice that should be the right of every aggrieved citizen. Under our form of Government every injured person is supposed to be entitled to his "day in court." So long as the Government continues to have busi-

ness with its citizens there is no reason why it should be exempt from the operation of this rule. To plead the statute of limitation does not appear to be in keeping with a great and magnanimous government. Neither should the Government, nor any of its agents, ever conceal information in regard to what it lawfully and equitably owes any person; and yet there is a strange rule in the departments by which all information is refused, and access to the public records is denied, unless the applicant makes an affidavit that it is not to be used in making claims against the Government. If a private citizen concealed the evidence of his indebtedness, so that the children or heirs of his creditors would be kept in ignorance of sums justly due them, his conduct would be deemed infamous. It is difficult to imagine where such a low grade of official morality could have originated. Akin to it is the spirit so often manifested, by some officials, of rejecting meritorious claims on some flimsy technicality. Many of the most extravagant forms of government expenditure pass smoothly under systematic forms of red tape, while honest accounts of men not so familiar with government technicalities are apt to suffer, or to be relegated to the class of "claims."

It is not surprising that many claims against the Government are continually arising out of the great business of the Government with its citizens. Some grow out of the inflexible terms of appropriation acts, others from a deficiency, and a few from the lapse of appropriations. No inconsiderable number owe their origin to the fact that some officials of the Government do not rigidly follow the law, and the unhappy citizen with whom they have dealt is liable to suffer for their carelessness. Another class of cases arises from arbitrary and unlawful enforcement of taxation, or strained enforcement of custom dues. Thousands of cases have arisen from arbitrary and unlawful reduction of pay to government laborers by certain officials, who did not approve of the law under which they acted. Numerous cases have grown out of different constructions of the law under which not only official persons, but soldiers and sailors, are paid. The law decides that certain parties shall receive pensions, and the executive department decides on the individual case; therefore Congress is flooded with pension bills. Government transportation and the postal service of the United States are fruitful sources of claims against the Government, not only on account of disagreements as to the meaning of contracts and the law, but because the Government often demands service that is destructive to the property of those dealing with it. Questions affecting the disposal of the public lands are settled in an executive rather than in a judicial way. Mere clerks pass on interests involving thousands or even millions of dollars. The question remains: How shall these conflicting claims be most promptly and honestly adjusted? There may be, and doubtless are, cases where there are equities, which should be considered, that have not a sufficiency of applicable law on which courts could pass, and for which there is only a remedy with the law-making power. It is also true that in the greater number of cases before Congress, a remedy in the courts could be had if complete and proper jurisdiction was given. These tribunals should pass, not only on technical law, but on questions of equity. Supplement this by more comprehensive laws to cover every class of claims. Create an inexpensive jurisdiction for the smaller cases. One thing is certain, Congress should be relieved from a burden which it is so much in the habit of shirking, and honest claimants be furnished a just and prompt remedy.

WM. A. PHILLIPS.

## II.

### THE COMING "PRODUCERS' PARTY."

THE "fortunate" classes in England, France, and Germany, know that there exists in those countries a conflict—an irrepressible conflict between the fortunate